
AUDIT REPORT



USE OF CONTRACTORS BY THE DEPUTY CHIEF FINANCIAL OFFICER

2001-AO-0002

JUNE 4, 2001

OFFICE OF AUDIT, CAPITAL DISTRICT
WASHINGTON, DC



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TO: Daniel R. Murphy, Chief of Staff, S
V. Stephen Carberry, Chief Procurement Officer, N

FROM: Sandra G. Elion, District Inspector General for Audit, Capital District, 3GGA

SUBJECT: Use of Contractors by the Deputy Chief Financial Officer

In response to an anonymous complaint, we performed a limited review of the Deputy Chief Financial Officer's (CFO) use of contractors. The complaint alleged that the Deputy CFO misused contract staff to perform inherently governmental functions and personal services, the contract staff duplicated work performed by HUD employees, and contract staff displaced HUD employees from their workspace.

We concluded that PricewaterhouseCoopers (PwC), at the request of the Deputy CFO, prepared statements of work (SOWs), submitted proposals, and won two Federal Housing Administration contracts worth \$12.9 million. Neither the Deputy CFO nor PwC disclosed PwC's participation in preparing the SOWs or the resulting organizational conflict of interest. In addition, PwC was directed to perform inherently governmental functions and personal services. We did not find duplication of work being performed by the contractors. However, we did find that HUD employees were moved from their workspace. Such movement did not violate any laws or regulations.

Within 60 days, please provide us with a status report of corrective actions taken on each recommendation made in this report. The status report should be prepared in accordance with Appendix 6 of HUD Handbook 2000.06 REV-3 and should include the corrective action taken or proposed corrective action and the date to be completed, or why the action is considered unnecessary. Also, please furnish us copies of any correspondence or directives issued because of this review.

Executive Summary

In response to an anonymous complaint, we completed a limited review of the Deputy Chief Financial Officer's (CFO) use of contractors. The overall audit objective was to determine whether the allegations regarding the misuse of contractors were valid. Our specific objectives were to determine if contractors: (1) performed inherently governmental functions and personal services; (2) duplicated work performed by HUD employees; and (3) displaced HUD employees from their workspace.




The complaint was partially valid

We determined that the complaint was partially valid. Contractors were performing both inherently governmental functions and personal services that consisted of drafting Congressional testimony and correspondence, and responding to Inspector General (IG) and General Accounting Office (GAO) audit reports. The allegations concerning duplication of work and displacement of government employees were not fully substantiated. We found that contractor employees were performing functions that had been performed by HUD staff before downsizing, retirements, and other personnel changes. Also, four HUD CFO employees were moved from their workspace to other office locations, but their movement to new space was based on a management decision and did not violate any laws or regulations.

Although not specifically addressed in the complaint, we determined that PricewaterhouseCoopers (PwC) prepared statements of work (SOWs) at the request of the current Deputy CFO. Neither the Deputy CFO nor PwC disclosed PwC's participation in preparing the SOWs or the resulting organizational conflict of interest.



Recommendations

We recommend that the Deputy Secretary: take appropriate administrative and disciplinary actions against the Deputy CFO for her role in requesting PwC to violate the FAR; and review whether the Chief Procurement Officer (CPO) acted appropriately in deciding to allow PwC to recompete for the Funds Control contract.

We recommend that the CPO: develop additional procedures for contracting staff; exclude PwC from recompetition; and require Government Technical Representatives (GTRs) and Government Technical Monitors (GTMs) to report inappropriate contracting actions.

The Deputy Assistant Inspector General for Audit notified Saul Ramirez, former Deputy Secretary, of the problems with the SOW in a memorandum dated November 2, 2000, and they met to discuss the issues on November 15, 2000. We also discussed these issues with the former Assistant Secretary for Housing on October 17, 2000.

We provided a draft of this report to the Chief of Staff and the Chief Procurement Officer on April 23, 2001. We held an exit conference with the Chief of Staff on May 3, 2001, and the Chief Procurement Officer on May 14, 2001. The Chief of Staff and Chief Procurement Officer provided written responses to the draft report on May 18, 2001, and May 24, 2001, respectively. We have summarized and evaluated the responses in the findings and have included the complete text of the comments in Appendix C.

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Introduction

During May 2000, we received an anonymous complaint alleging that the Deputy Chief Financial Officer (CFO) had misused contract staff to perform inherently governmental functions and personal services, duplicate work performed by HUD employees, and displace HUD employees from their workspace.

Prior to becoming the Acting Deputy CFO in March 2000, the Deputy CFO was the Federal Housing Administration's (FHA) Comptroller and had been working with PricewaterhouseCoopers (PwC) on the FY 1998 Credit Reform contract. The Deputy CFO's main focus was to obtain an unqualified opinion on the Department's FY 1999 financial statements by reconciling HUD's account balance with the U.S. Treasury. To that end, she immediately requested the assistance of PwC, more specifically the PwC Program Manager who had oversight of FHA's credit reform activities, to resolve material discrepancies identified by the OIG. This request included the physical relocation of the PwC Program Manager to an office closer in proximity to the Deputy CFO to assist her in her new position. The Deputy CFO stated that this move was necessary because she had a certain trust and comfort level with the PwC staff that she did not have with the CFO staff.

FHA Contracts with PwC

Since June 1998, PwC has been awarded four FHA contracts valued at \$22.4 million. The two FHA Credit Reform contracts for FYs 1998 and 1999 tasked PwC to assist with the year-end closing and the financial statement preparation in accordance with OMB Bulletin 97-01 and Fed-GAAP. PwC was also tasked to review the credit reform budget models and provide solutions for any models that were not in compliance with Fed-GAAP. The overall objective of the contracts was to ensure that the work performed would lead to an unqualified opinion on FHA's audited financial statements. The services requested on the third contract, Audit Response, required the development and implementation of an Activity Based Costing (ABC) model, the design of a funds control process, and the validation and development of plans to resolve over 400 audit recommendations. On the fourth and most recent contract, Funds Control, the services included redesigning and improving the funds control process, expanding ABC methodology across all FHA programs, implementing Fed-GAAP accounting, assisting with the implementation of Commercial Off-The-Shelf (COTS) software, and validating and developing plans to resolve over 400 audit recommendations. The following table shows the details of the FHA contracts with PwC.

FHA Contracts with PricewaterhouseCoopers

Contract Number and Description	Contract Type	Base or Option	Period of Performance	Amount
C-OPC-21217 Task Order 1 FY 1998 Credit Reform	Labor Hour	Base Year	6/26/98 - 6/25/99	\$2,194,390
C-OPC-21273 Task Order 3 FY 1999 Credit Reform	Labor Hour Labor Hour Labor Hour Labor Hour	Base Year Option 1 Option 2 Option 3	5/14/99 - 5/14/00 5/15/00 - 5/14/01 5/15/01 - 5/14/02 5/15/02 - 5/14/03	\$2,100,000 \$2,508,947 \$1,581,437 \$1,152,801
C-OPC-21217 Task Order 4 Audit Response	Labor Hour	Base Year	9/30/99 – 11/30/00 (With a 2-Month Extension)	\$2,287,471
C-OPC-21799 Funds Control	Time & Material Labor Hour Labor Hour	Base Year Option 1 Option 2	8/09/00 - 8/08/01 8/09/01 - 8/08/02 8/09/02 - 8/08/03	\$3,450,144 \$3,695,464 \$3,460,193
Total Awarded				<u>\$22,430,847</u>

CFO Contracts with PwC

During February 2000, the CFO's office issued a purchase order to have PwC assist in reconciling the \$70 billion variance in HUD's accounts with the U.S. Treasury. As a continuation of the purchase order, PwC was awarded task order 17, noncompetitively, for Audit and Accounting Support to complete the Treasury reconciliation and ensure auditable support for the reconciliation. Task order 18, was subsequently awarded to have PwC review the HUDCAPS and Procurement Accounting System, Office of the CFO roles and responsibilities, and management decisions for all reportable conditions and material weaknesses. Tasks in task order 18 related to resolving outstanding audit recommendations were also included in the FHA Audit Response and Funds Control contracts. Most noteworthy is that each of the three contractual instruments (CFO purchase order and subsequent task orders for Audit and Accounting Support) also identified the Secretary's priority of obtaining an unqualified audit opinion on HUD's financial statements. The following table shows the details of the CFO contracts with PwC.

CFO Contracts with PricewaterhouseCoopers

Contract Number Description	Contract Type	Base or Option	Period of Performance	Amount
SO2000CAP-0008 Treasury Cash Reconciliation	Purchase Order	N/A	2/26/00 – 2/27/00	\$25,000
C-OPC-18542 Task Order 17 Audit and Accounting Support	Fixed Price	N/A	3/01/00 – 3/15/00	\$250,000
C-OPC-18542 Task Order 18 Audit and Accounting Support	Time & Materials	Base Year	3/16/00 – 3/15/01	\$2,926,055
Total Awarded				<u>\$3,201,055</u>

Audit objectives, scope, and methodology

The overall audit objective was to determine whether the allegations in the complaint regarding the misuse of contractors were valid. However, we expanded our scope to include a review of the process used to award contracts to PwC. Other specific objectives were to determine if contractors: (1) performed inherently governmental functions and personal services; (2) duplicated work performed by HUD employees; and (3) displaced HUD employees from their workspace.

The review covered the period June 1998 through October 2000. The field work was conducted May 19, 2000, through November 2000. Our audit methodology included:

- Reviewing Federal rules and regulations and Departmental policies and procedures for contracting;
- Examining PwC contract files maintained by the Office of the Chief Procurement Officer;
- Evaluating PwC monthly status reports;
- Reviewing the deliverables and documents prepared by PwC;
- Conducting interviews with HUD staff and PwC staff, attorneys, and partners; and
- Reviewing prior audit reports on HUD's contracting activities.

We conducted our audit in accordance with generally accepted government auditing standards.

PwC Prepared SOWs and Won Contracts Worth Millions

PricewaterhouseCoopers (PwC) prepared statements of work (SOWs), submitted proposals, and won two Federal Housing Administration (FHA) contracts worth millions. PwC's actions violated the Federal Acquisition Regulation (FAR) and created an organizational conflict of interest that was not disclosed to HUD. Also, PwC had an unfair competitive advantage and HUD did not obtain adequate competition due to FHA's selection of firms to receive the Request for Proposals (RFPs). These conditions occurred because the Deputy Chief Financial Officer requested PwC to prepare the SOWs. As a result, HUD's procurement integrity was compromised and HUD may not have received the best value for contracted services totaling over \$12.9 million.

Criteria – preparation of SOWs and organizational conflicts of interest

HUD Handbook 2210.3, Procurement Policies and Procedures, Chapter 5.3(d), states, "... the program office is responsible for preparing the SOW. When assistance is required, the contracting officer should provide technical assistance in drafting and revising the SOW as requested."

The FAR, Subpart 9.505-2(b)(1), states that if a contractor prepares or assists in preparing the SOW to be used in competitively acquiring a system or service, that contractor may not provide the system or service. To overcome the possibility of bias, contractors are prohibited from supplying services acquired on the basis of work statements developed out of their services.

The FAR, Subpart 9.501, states an organizational conflict of interest exists when activities or relationships might result in (1) an unfair competitive advantage; or (2) the contractor's objectivity being impaired in performing the contract work.

PwC prepared SOWs

PwC prepared SOWs for two FHA contracts, Audit Response and Funds Control. PwC prepared tasks and objectives that contained essentially the same information as the SOWs the Office of the Chief Procurement Officer (OCPO) used in the RFP process. Our comparison of the SOWs in the RFPs prepared by OCPO and the SOWs prepared by PwC for the Audit Response and Funds Control contracts showed that over 90 percent of the objectives and tasks that PwC wrote were

included in the RFPs. (See Appendices A and B for a complete timeline of events).

Audit Response. On September 14, 1999, OCPO sent the RFP containing essentially the same SOW prepared by PwC on June 23, 1999, to PwC and two other contractors. PwC knew that the SOW in the RFP was the same one it had prepared. PwC submitted a proposal to the solicitation and subsequently received a \$2.3 million award on September 30, 1999.

Funds Control. On December 21, 1999, only 3 months after receiving the Audit Response contract, PwC wrote the SOW for the Funds Control contract. On June 1, 2000, OCPO sent the RFP containing essentially the same SOW that PwC had written to PwC and two other contractors. PwC was awarded the 1-year contract with an effective date of August 9, 2000, and 2 option years totaling \$10.6 million.

PwC should not have prepared the SOWs since OCPO provides assistance to program offices to develop SOWs. If the program office determines that industry experts, such as PwC, are needed to determine the tasks that should be included in the SOW, then OCPO allows the program office to award a contract to the experts for this purpose. However, the experts used to define the SOW are prohibited from competing for the services.

Although PwC stated that it only had limited participation in providing advice and recommendations for the tasks that would be included in the SOWs, we concluded that PwC prepared complete SOWs and even submitted proposals after learning that the services for Audit Response and Funds Control were being competed. PwC originally believed the additional tasks would be added to the existing task orders as modifications.

PwC had organizational conflicts of interest

PwC had organizational conflicts of interest (OCI) for both the Audit Response and Funds Control contracts, but this was not disclosed to HUD. A PwC partner received an electronic copy of the Audit Response SOW on June 24, 1999, that had been prepared by the PwC Program Manager. However, PwC did not sign or submit an OCI certification for the Audit Response contract and OCPO did not request one. Another PwC

partner attended meetings held by FHA to discuss and define the objectives and tasks for the Funds Control SOW. On June 26, 2000, that same PwC partner signed the OCI certification for the Funds Control contract that stated, "...the bidder or offeror certified that to the best of its knowledge and belief and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work to be performed under this proposed government contract and the bidder or offeror's organizational, financial, contractual or other interest may, without some restriction or [sic] future activities: (a) result in an unfair competitive advantage to the offeror; or (b) impair the offeror's objectivity in performing the contract work."

Criteria – soliciting proposals

The FAR, Subpart 8.404, requires agencies to place orders with the contractors on the GSA schedule that can provide the services at the best value by soliciting at least three contractors.

The FAR, Subpart 15.201, Solicitation and Receipt of Proposals and Information, states when specific information about a proposed acquisition that would be necessary for the preparation of proposals is disclosed to one or more potential offerors, that information shall be made available to the public as soon as practicable in order to avoid creating an unfair competitive advantage.

HUD Handbook 2210.3, Procurement Policies and Procedures, Chapter 4, states that the program offices are responsible for developing a list of potential contractor sources to provide the services.

Unfair competitive advantage

PwC had an unfair competitive advantage over the other two firms solicited for the Audit Response contract. PwC, Arthur Andersen, and Deloitte and Touché were the three firms chosen from the GSA schedule to receive the RFP for the Audit Response contract. Of the three firms, PwC and Arthur Andersen were the only firms to submit proposals. By preparing the SOW, PwC had 3 months advance knowledge of the tasks listed in the SOW while Arthur Anderson had only 7 days to prepare a proposal. Consequently, PwC was better able to address the requested objectives and tasks. This is one of the fundamental reasons the FAR restricts contractors from submitting proposals in which they have had direct and material

involvement in preparing the SOW at the exclusion of other contractors.

Arthur Andersen's proposal was not selected even though it was significantly lower in price than PwC's proposal. However, if Arthur Andersen had been given the same amount of time as PwC to review the SOW and submit an extensive proposal, HUD may have received a better value for these services from Arthur Andersen.

Inadequate competition

HUD did not obtain adequate competition for the Funds Control or Audit Response contracts.

Funds Control. OCPO solicited proposals from PwC, Deloitte and Touché, and KPMG. Deloitte and Touché did not prepare a proposal because of its existing workload and a potential conflict of interest, and KPMG declined to submit a proposal. KPMG performs the audit of FHA's financial statements and had reported material weaknesses and reportable conditions on the most recent audit. The current FHA Comptroller told us that KPMG would have had a conflict of interest since the Funds Control SOW required performing tasks to improve areas where KPMG had reported material weaknesses. FHA's management knew that the tasks included in the Funds Control SOW were necessary to resolve the material weaknesses and should have also excluded KPMG as a potential source for the Funds Control contract. As a result, PwC had inadequate competition since no other bids were received. FHA's failure to exclude Deloitte and Touché and KPMG as potential contract sources created the appearance that contracts may have been steered in favor of PwC.

Audit Response. OCPO solicited three contractors, but Deloitte and Touché chose not to submit a proposal because its existing workload in FHA and Ginnie Mae would have caused a conflict of interest. FHA's management was aware of this conflict and should have excluded Deloitte and Touché from the list of potential sources.

Responsible contract specialists stated that they did not follow-up with Deloitte and Touché or KPMG to determine why they did not submit proposals. If OCPO had performed this follow-

up, they may have determined the extent of FHA's actions to steer the contracts to PwC.

**Deputy CFO's actions
were improper**

The Deputy CFO (former FHA Comptroller) should have known that it was improper to request PwC to write SOWs and allow them to compete for the contract. She was well aware that PwC had prepared the SOWs but she did not make any attempt to disclose PwC's preparation of the SOWs to OCPO. The request for PwC to prepare the SOWs may have occurred because of the close working relationship between the current Deputy CFO and the PwC Program Manager. During interviews with the Deputy CFO, she stated that part of the agreement for moving from the FHA Comptroller position to the Deputy CFO position was that she could bring her PwC staff with her from FHA. The PwC Program Manager, a key employee, was relocated from FHA to a private CFO office. In our opinion, it was clear from our discussions with the Deputy CFO, that she was not being impartial in her decisions regarding PwC.

**OIG request for OCPO
intervention**

On August 17, 2000, we requested HUD's Chief Procurement Officer's (CPO) intervention in stopping the award of the Funds Control contract to PwC. The CPO not only allowed the contract to be signed on September 30, 2000, but gave a verbal approval to start work on August 9, 2000. The CPO and an Office of General Counsel attorney met with PwC on September 13, 2000, and agreed to remedies for PwC's participation in preparing the SOWs for the Audit Response and Funds Control contracts. The five remedies are:

- PwC will return 20 percent of the funds received under the FHA Audit Response contract.
- PwC will return 20 percent of the funds received to date under the FHA Funds Control contract.
- HUD will conduct a new competition for the Funds Control contract as soon as possible using accelerated procurement procedures which will allow all interested bidders to propose changes or additions to the proposed SOW.
- PwC will continue to credit HUD 20 percent on all new billings under the Funds Control contract until the new competition is completed. If PwC is selected, the requirement of a 20 percent credit will cease.

- PwC will provide HUD with documentation of the measures it has taken to sensitize its staff to future organizational conflicts of interest issues of this kind.

We do not believe PwC should be allowed to compete in the new competition for the Funds Control contract. Although, under accelerated contract procedures, other contractors will be able to review the SOW and propose changes and additions, PwC has had an extraordinary amount of exposure to the work specifications and has been performing the work since August 9, 2000. The competitive advantage is even greater now because PwC has had knowledge of the work specifications since December 21, 1999, and will continue performing the work until the contract is recompleted.

Conclusion

HUD's procurement integrity was compromised and contracted services totaling over \$12.9 million (\$2.3 million for the Audit Response contract and \$10.6 million for the Funds Control contract) may not have been provided to HUD at the best value. The Deputy Secretary needs to ensure that HUD managers do not work with contractor staff to write SOWs and allow the same contractors to bid on the contract. Contractors and management should be admonished for allowing these actions to occur.

Auditee Comments

The Chief of Staff, as the Acting Deputy Secretary, agreed with the finding and the related recommendations concerning administrative and disciplinary actions against the Deputy Chief Financial Officer. Management also plans to implement additional corrective action, if warranted, to address the recommendation concerning the decisions made by the Chief Procurement Officer (CPO) in allowing PwC to compete for the Funds Control contract.

The CPO agreed with the finding and concurred with all but one of the recommendations. The CPO stated that he cannot require an organizational conflict of interest certification because the 1996 Federal Acquisition Reform Act mandated the removal of non-statutorily based certifications from agency supplements to the Federal Acquisition Regulation. However,

he stated that he would ensure that current solicitation provisions and contract clauses are used in all HUD contracts and purchases using GSA schedules. Current HUD/OCPO policy addresses the identification and mitigation of such conflicts and the HUD Acquisition Regulation requires contractors to disclose potential or actual conflicts of interest after contract award and provides for the termination of contracts.

OIG Evaluation of
Auditee Comments

We concur with the Chief of Staff's response.

We believe the CPO's alternative to our recommendation regarding organizational conflicts of interest satisfies the intent of the recommendation and the use of the recently implemented Accelerated Contracting procedures will also help to facilitate this effort.

Recommendations

We recommend that the Deputy Secretary:

- 1A. Take appropriate administrative and disciplinary actions against the Deputy CFO for her role in requesting PwC to take actions that violate the FAR.
- 1B. Evaluate whether the CPO acted appropriately in his decision to allow PwC to participate in the recompetition process, and ensure that appropriate administrative actions are taken.

We recommend that the CPO:

- 1C. Develop procedures that will ensure OCPO staff obtains a signed organizational conflict of interest certification for all contracts.
- 1D. Obtain and evaluate reasons why contractors decline to submit proposals. When only one proposal is received, consider reannouncing the contract solicitation to expand competition.

- 1E. Develop procedures to ensure that potential source lists do not include contractors with known conflicts of interest.
- 1F. Ensure that PwC returns 20 percent of the amount received on the completed Audit Response contract (\$456,604) and 20 percent of the amount billed on the Funds Control contract (\$277,195) through February 28, 2001.
- 1G. Exclude PwC from participating in future competition for the contracts resulting from PwC-prepared SOWs.

Contractor Performed Inherently Governmental Functions and Personal Services

PwC performed inherently governmental functions and personal services that included preparing Congressional testimony, drafting responses to IG and General Accounting Office (GAO) audit reports, and preparing an annual report to Congress. This occurred because the Deputy CFO directed PwC to complete these tasks and limited the responsible Government Technical Representatives (GTR) and Monitors (GTM) from monitoring the contractor's activities. As a result of the Deputy CFO requesting these tasks, one of PwC's contracts required a time extension and a \$335,397 increase in the funding ceiling.

Criteria

The FAR, Subpart 7.501, defines an inherently governmental function as a function that is so intimately related to the public interest as to mandate performance by government employees. The FAR, Subpart 7.503(a), states that, "...contracts shall not be used for the performance of inherently governmental functions...(c) the following is a list of examples of functions considered to be inherently governmental functions or which shall be treated as such...(20) the drafting of Congressional testimony, responses to Congressional correspondence, or agency responses to audit reports from the Inspector General, the General Accounting Office, or other Federal audit entity."

The FAR, Subpart 37.104(a), characterizes personal service contracts by the employer-employee relationship it creates between the Government and the contractor's personnel. Unless specifically authorized by Congress, the Government is restricted from circumventing the civil service laws when hiring employees. This section provides six elements to determine whether a contract is personal in nature:

- Performance on site.
- Principal tools and equipment furnished by the Government.
- Services are applied directly to the integral effort of agencies or an organizational subpart in furtherance of assigned function or mission.
- Comparable services, meeting comparable needs are performed in the same or similar agencies using civil service personnel.

- The need for the type of service provided can reasonably be expected to last beyond 1 year.
- The inherent nature of the service, or the manner in which it is provided, reasonably requires directly or indirectly, Government direction or supervision of contractor employees in order to adequately protect the Government's interest, retain control of the function involved, or retain full personal responsibility for the function supported in a duly authorized Federal officer or employee.

HUD Handbook 2210.3, Procurement Policies and Procedures, states that the GTR is the Department's primary point of contact with a contractor. In this capacity, the GTR is responsible for providing contractors with technical advice and guidance related to the work required by the contract. The GTR is also the principal judge of a contractor's performance, including the quality and timeliness of work and products.

**PwC prepared
Congressional testimony**

HUD violated the FAR by allowing PwC to prepare Congressional testimony, which is an inherently governmental function. During the period March 16 to 22, 2000, PwC assisted the Deputy CFO and HUD's Office of General Counsel in preparing for the Deputy Secretary's Congressional testimony before the House Government Reform Committee, Subcommittee on Government Management Information and Technology. The testimony was given to provide Congress with the status of the Department's financial management systems, and the material weaknesses reported in the OIG's attempt to audit the Department's FY 1999 Financial Statements.

The Deputy CFO selected the PwC Program Manager as her liaison with the CFO staff, Office of General Counsel, and other senior HUD management because the PwC Program Manager was knowledgeable of HUD's financial reconciliation process. The PwC Program Manager developed and set the tone of the Deputy Secretary's presentation, thereby significantly influencing the final version of the testimony given to Congress. PwC presented the testimony in a manner that lessened the magnitude of

the problems. Even though the HUD staff provided input and responded to a list of potential questions, the PwC Program

Manager used her discretion to structure the wording and substance of the testimony. The PwC Program Manager acknowledged that she softened and clarified the language, checked the facts, and added detailed paragraphs describing the work PwC was performing under the CFO's Audit and Accounting Support contract. However, it is HUD's responsibility to ensure that testimonies represent the agency and not the contractor's interests.

PwC's contract with the office of the CFO did not include services to draft Congressional testimony and the manner in which PwC performed this function for the Deputy CFO met the elements for personal services. We attribute PwC's involvement in the drafting of Congressional testimony to the fact that the Deputy CFO directed the task be performed. The Deputy CFO relied on the PwC Program Manager to perform tasks that were outside the SOW because she had established a good working relationship with the PwC Program Manager while in FHA. The Deputy CFO advised us that she felt she could trust the PwC Program Manager, but she did not have the same trust in the CFO staff.

PwC assisted in drafting responses to IG and GAO audit reports

PwC drafted responses to IG and GAO audit report recommendations and openly acknowledged this on the weekly status reports for three different contract task orders with FHA and the CFO. Drafting such responses was outside the scope of the contract and is an inherently governmental function. PwC's task, under the Audit Response contract, was to evaluate management's responses to material weaknesses and reportable conditions. PwC status reports specifically stated that PwC provided assistance in coordinating, drafting, and redrafting the responses to the IG's material weaknesses and GAO's statements of fact.

The Deputy CFO asked PwC to assist in responding to a GAO audit report by developing the HUDCAPS Corrective Action Plan and evaluating the proposed completion dates. PwC also responded to GAO statements of fact and addressed whether or not the actions to be taken were sufficient to resolve the recommendations. PwC added specific language and detailed plans as necessary to ensure resolution. In other instances, PwC made suggestions for clarifying and enhancing the responses to the recommendations. FHA's annual procurement

plan for the Audit Response contract stated there was insufficient staff to resolve the past recommendations or prevent future material weaknesses. In some instances, PwC was the only decision maker for the audit responses because HUD employees were unfamiliar with the issues. The annual plan describes the Audit Response contract as, "...to obtain technical assistance in responding to 400 GAO and OIG audit weaknesses." OCPO contract specialists should have identified this function as inherently governmental in nature and should have questioned the use of contractors to perform these services.

The FHA Audit Liaison Officer (ALO) and other HUD staff also stated that one of the reasons the audit resolution tasks were in the SOW was because there was not enough staff remaining to perform this function after the downsizing from the HUD Reform 2020. Because of insufficient staff, HUD senior management requested PwC to aggressively pursue the resolution of over 400 recommendations that had accumulated over the past several years. But, management did not consider that PwC's involvement would include drafting corrective actions and responses necessary to resolve the recommendations. However, the audit resolution tasks in the Audit Response contract were repeated verbatim in the Funds Control contract because at the end of the Audit Response contract nearly 400 recommendations remained unresolved. PwC resolved some of the original 400 recommendations but the number of recommendations on more recent audits increased the total to nearly 400 again. HUD needs to manage its audit resolution using HUD program personnel that are more familiar with the program issues. During our recent discussions with the ALO, she stated that FHA was in the process of hiring additional staff for audit resolution.

PwC assisted in preparing the Annual Report to Congress

Although not contracted to perform this task, PwC prepared input for HUD's Annual FHA Report to Congress dated March 31, 2000. Section 1709(x) of 12 U.S.C. requires HUD to submit an Annual Report to Congress that describes the Secretary's plans to address material weaknesses, reportable conditions, and noncompliance with applicable laws or regulations identified in FHA's audited financial statements. PwC edited and revised some of the original documents FHA staff prepared for the annual report.

As stated earlier, with the drafting of Congressional testimony, the Deputy CFO requested PwC's assistance in preparing the Annual Report to Congress. The Deputy CFO assigned this task to PwC because PwC was already assisting HUD in its audit resolution under the Audit Response contract. However, the FAR specifically defines the drafting of Congressional correspondence as an inherently governmental function.

GTRs/GTMs were limited in their abilities to perform their monitoring responsibilities

The GTRs and GTMs within FHA were limited in their abilities to perform their contract monitoring responsibilities because the Deputy CFO was continuously redirecting the work of the contractors and not keeping the GTR and GTM informed of the changes in the tasks. According to HUD's regulations, the GTR can delegate responsibilities to the GTM. The GTMs on PwC contracts were delegated the responsibility for resolving discrepancies between the work being performed and the contract SOW. However, the GTRs and GTMs did not speak up about discrepancies between the SOW and work being performed because they had personally witnessed retaliatory actions or had retaliatory actions taken against them by the Deputy CFO. Had the GTRs and GTMs been allowed to perform their monitoring functions without the fear of retaliation, they would have reported the inherently governmental functions and personal services to the CPO. Also, the GTMs' and GTRs' responsibilities and authority were not clearly defined because the Deputy CFO did not prepare appointment memoranda, as required by HUD Handbook 2210.3, Procurement Policies and Procedures.

Conclusion

The use of PwC to perform inherently governmental functions and personal services that are outside the scope of the contract SOW reduces the time available for contractors to perform actual contract work. Allowing PwC to draft responses to recommendations under the Audit Response contract resulted in a contract modification to increase the funding ceiling by \$335,397 to complete the contract services. The contract was then modified again to add an additional 2 months to the original contract period.

Adequate monitoring, free from management intervention, is essential to ensure that HUD is not paying the contractor to perform functions that are outside the contract SOW. Also, the

purpose of monitoring contractor performance is to ensure that HUD receives quality deliverables on schedule and that contract personnel are providing the services requested in the contract SOW.

Auditee Comments

The Chief of Staff, as the Acting Deputy Secretary, agreed with the finding and related recommendation concerning administrative and disciplinary actions against the Deputy Chief Financial Officer.

The CPO agreed with the finding with the exception of the issue regarding use of contractors for inherently governmental functions. The CPO's position is that contractors can provide expert technical assistance and advice on many aspects of the Government's business without actually performing any inherently governmental activity.

The CPO agreed with our recommendations but offered an alternative to Recommendation 2D. The CPO believes the GTR/GTM should first use the official chain of command and if resolution does not occur, then other avenue, such as reporting the situation to OIG, should be explored. In addition, the CPO stated that if the issue involves an ongoing procurement action or existing contract, concurrent with the above attempts at resolution, the matter should also be brought to the attention of the cognizant contracting officer in the OCPO.

OIG Evaluation of Auditee Comments

We acknowledge that contractors who only provide advice and recommendations are within the guidelines of the Office of Management and Budget policy regarding inherently governmental functions. However, PwC's actions extended beyond providing advice and recommendations, since they actually drafted the responses to the recommendations. We were told on numerous occasions that the HUD staff did not have the expertise to respond to the audit findings since contractors were actually performing the work. PwC's actions were inappropriate because PwC's direct involvement in drafting the responses could result in resolving

recommendations while setting themselves up to perform additional contract work based on those responses.

We agree with the alternative approach provided by the CPO for the GTRs/GTMs to report inappropriate contract actions. His plan to issue a memorandum to outline the procedures for resolving inappropriate contract actions meets the intent of our recommendation.

Recommendations

We recommend that the Deputy Secretary:


- 2A. Take appropriate administrative and disciplinary actions against the Deputy CFO for allowing PwC to perform inherently governmental functions and personal services in violation of the FAR.

We recommend that the CPO:

- 2B. Evaluate SOWs to identify and eliminate tasks that may be inherently governmental functions.
- 2C. Instruct the Deputy CFO and other HUD managers not to interfere with the GTRs and GTMs when they are performing their contracting duties.
- 2D. Require GTRs and GTMs to report inappropriate contract actions directly to the CPO and guarantee protection from retaliation for those who report such actions.
- 2E. Ensure that GTRs and GTMs are formally designated in writing and trained in executing contractual responsibilities.

Management Controls

In planning and performing our audit, we considered management controls to determine our auditing procedures. We obtained an understanding of the controls relevant to our audit objectives. Management controls include the plan of organization, methods, and procedures adopted by management to ensure that its goals are met. Management controls include the processes for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. Management controls also include the process by which an entity obtains reasonable assurance as to achievement of specified objectives.



Relevant management controls

We determined that management controls over the following areas were relevant to our audit objectives:

- Compliance with Federal laws and regulations.
- Compliance with HUD policies and procedures.
- Monitoring and oversight of contractors.

Significant weaknesses

A significant weakness exists if management controls do not give reasonable assurance that resources are safeguarded against waste, loss, and misuse; and that reliable data is obtained, maintained, and fairly disclosed in reports.

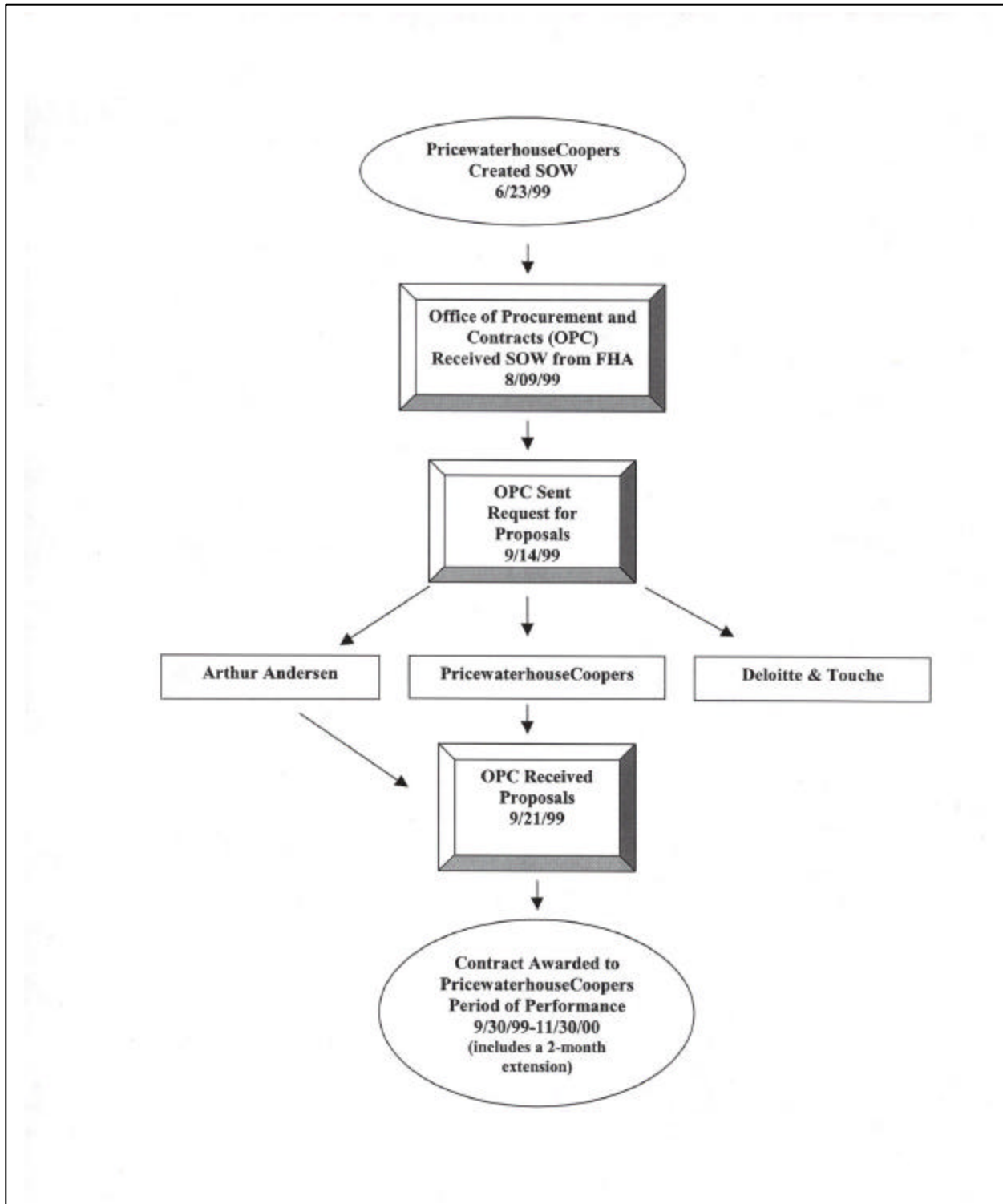
Based on our review, we believe significant weaknesses exist in the areas of compliance with the FAR and HUD policies and procedures, and contractor monitoring and oversight. These weaknesses are discussed in the findings.

Follow-Up On Prior Audits

The Office of Inspector General issued an audit report on September 30, 1997, on HUD's Contracting Operations. The report contained two findings related to issues addressed in this audit: Prohibited Services and Contractor Oversight and Monitoring.

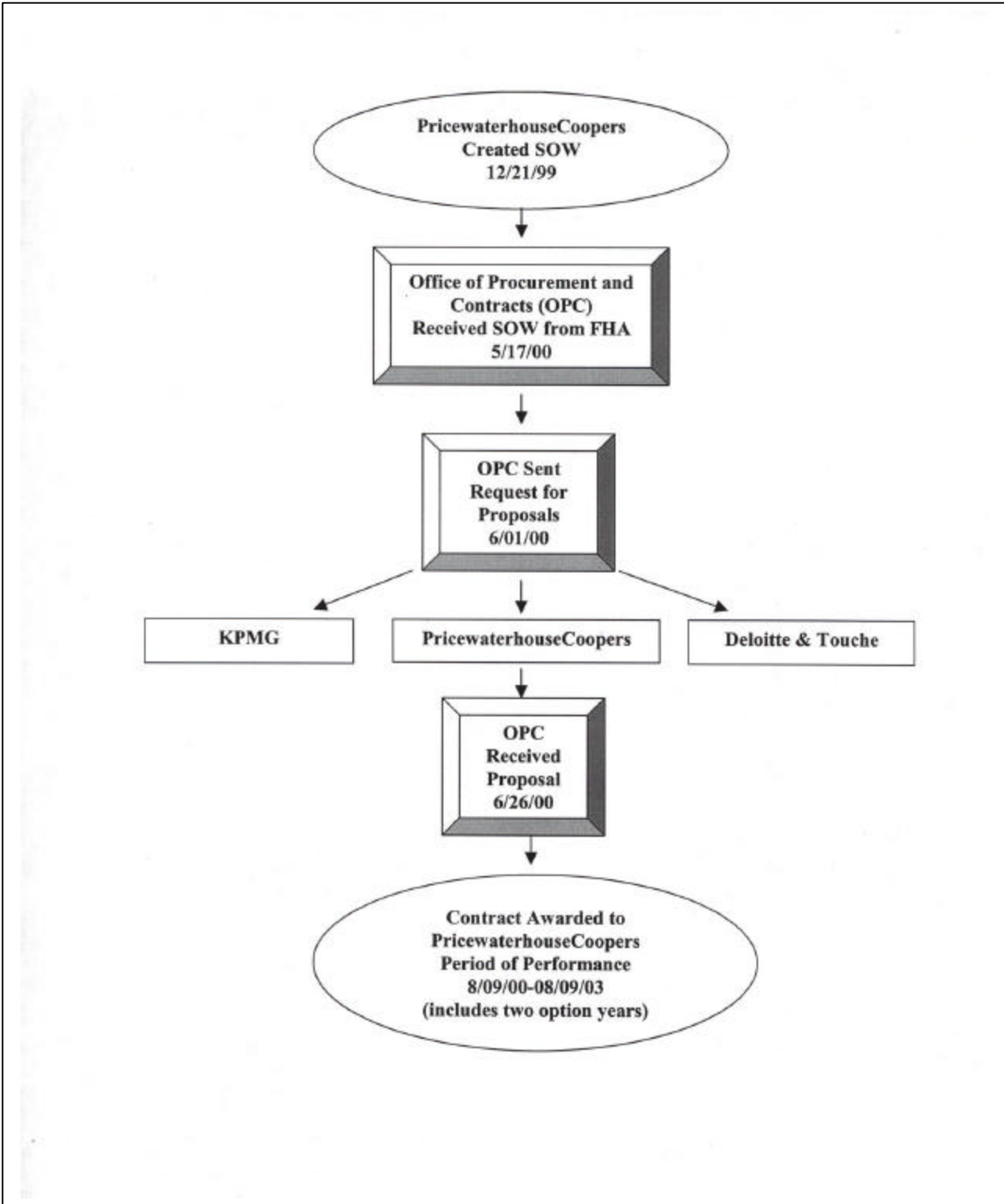
Audit Response Timeline

C-OPC-21217 – Task Order 4



Funds Control Timeline

C-OPC-21799



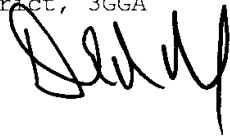
Auditee Comments



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE OFFICE OF THE SECRETARY
WASHINGTON, DC 20410-0001

May 3, 2001

MEMORANDUM FOR: Sandra G. Elion, District Inspector General
for Audit, Capital District, 3GGA

FROM: Daniel R. Murphy, Chief of Staff, S 

SUBJECT: Draft Report - Use of Contractors by the Deputy Chief
Financial Officer

This is in response to your memorandum of April 23, 2001, and attached draft report, "Use of Contractors by the Deputy Chief Financial Officer," and our subsequent meeting of May 3, 2001, to discuss your report and recommendations. In the draft report OIG concluded that PriceWaterhouseCoopers (PWC) at the request of the current Chief Financial Officer prepared statements of work for Departmental contracts that PWC later competed for and won in apparent contradiction of applicable Federal Acquisition Regulation principles. In accordance with OIG recommendations we have taken the following actions as indicated in the attached memorandums:

1. The Deputy Chief Financial Officer is no longer responsible for contracting operations in the Office of the CFO. Margaret Young has been placed in operational charge of CFO functions pending confirmation of a new CFO.
2. The Office of the Chief Procurement Officer has been directed to restart the funds control contract solicitation with safeguards to assure a fair and open competition, including precluding PWC from competing for the contract.
3. Principal Staff has been informed of the administrative changes in the CFO's office.
4. Additional action will be taken if warranted based upon our review of the final audit report.

Auditee Comments

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**Office of the Chief Financial Officer**

[Docket No. FR-]

Order of Succession

AGENCY: Office of the Chief Financial Officer, HUD.

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the Chief of Staff for the Department of Housing and Urban Development designates the Order of Succession for the office of Chief Financial Officer.

EFFECTIVE DATE:

FOR FURTHER INFORMATION CONTACT: Erie T. Davis, Jr., Administrative Officer, Office of the Chief Financial Officer, Department of Housing and Urban Development, Room 3128 , 451 7th Street, SW, Washington, DC 20410, (202) 708-0313. (This is not a toll-free number.) This number may be accessed via TTY by calling the Federal Information Relay Service at 1-800-877-8339 (toll-free).

SUPPLEMENTARY INFORMATION: The Chief of Staff for the Department of Housing and Urban Development is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of the Chief Financial Officer when, by reason of absence, disability, or vacancy in office, the Chief Financial Officer is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Vacancy Reform Act of 1998, 5 USC 3345-3349d.

Auditee Comments

Accordingly, the Chief of Staff designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Vacancy Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Chief Financial Officer is not available to exercise the powers or perform the duties of the Chief Financial Officer, the following officials within the Office of the Chief Financial Officer are hereby designated to exercise the powers and perform the duties of the Office:

- 1) Senior Advisor to the Chief Financial Officer;
- 2) Assistant Chief Financial Officer for Budget.

These officials shall perform the functions and duties of the Office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

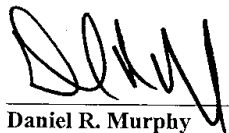
Section B. Authority Superseded

This Order of Succession supersedes the Order of Succession for the Office of the Chief Financial Officer, published at 65 FR 51016 (August 22, 2000).

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C.

Sec. 3535(d).

Dated: May 3, 2001


Daniel R. Murphy
Chief of Staff
Department of Housing and
Urban Development

Auditee Comments



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20410-0001

MAY 3 2001

MEMORANDUM TO: Principal Staff

FROM: Daniel R. Murphy, Chief of Staff, S

A handwritten signature in black ink, appearing to read "D. Murphy", written over the printed name in the "FROM" line.

SUBJECT: Items Submitted to the Office of the Chief
Financial Officer for Action

Until further notice, all matters forwarded to the Office of the Chief Financial Officer for action should be directed to Margaret A. Young, Senior Advisor to the Chief Financial Officer.

Cc: Margaret A. Young

Auditee Comments



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20410-0001

May 3, 2001

MEMORANDUM FOR: V. Stephen Carberry, Chief Procurement Officer, N

FROM: Daniel R. Murphy, Chief of Staff, S

A handwritten signature in black ink, appearing to read "DM", written over the "FROM" line.

SUBJECT: Funds Control Solicitation

On April 2, 2001 the Department suspended the recompetition of the Funds Control contract supporting activities of the FHA Comptroller's Office pending completion of an OIG audit and Departmental reassessment of its requirements. At that time, I also directed that the related CFO procurement for Phase I for the Departmental General Ledger be suspended.

Effective immediately, your Office shall continue processing the solicitation. Note, however, that because of the organizational conflict of interest created by PriceWaterhouseCoopers' (PWC) significant involvement in drafting the statement of work for the Funds Control Contract, PWC should be precluded from the competition as the prime contractor or as a subcontractor. Based on discussions with OGC, the solicitation shall proceed in a manner consistent with the following guidelines:

1. The drafting of the statement of work for the replacement Funds Control Contract shall be by an independent team assisted as needed by procurement attorneys in OGC.
2. The statement of work shall be 'outcome-based'.
3. In order to insure a fair and open competition, the Department shall actively solicit offerors to submit proposals.
4. To further reinforce full and open competition, since the previous solicitation only provided 10 days for submission of proposals, the new solicitation shall provide prospective offerors with adequate time to develop and submit proposals.

Auditee Comments

5. Insure that HUD personnel involved in the evaluation and award process are not influenced by PWC's prior and current contracts with the Office of the CFO and the FHA Comptroller's Office. In the absence of a confirmed FHA Commissioner, the General Deputy Assistant Secretary for Housing shall be the Source Selection Official. The solicitation shall continue to use an integrated program team comprised of staff from Housing, CIO, CFO and OCPO. OGC will provide legal assistance as necessary.

Should you need additional information, please contact me or George Weidenfeller at 708-2864.

Cc: George Weidenfeller
Margaret A. Young

Auditee Comments



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20410-0001

May 3, 2001

MEMORANDUM TO: Victoria L. Bateman, Deputy Chief Financial
Officer, F

FROM: Daniel R. Murphy, Chief of Staff, S

A handwritten signature in black ink, appearing to read "DRM", written over the printed name of Daniel R. Murphy.

SUBJECT: Items Submitted to the Office of the Chief
Financial Officer for Action

As a follow-up to my memorandum to you dated April 2, 2001, effective immediately, I am directing that all matters forwarded to the Office of the Chief Financial Officer for action be directed to Margaret A. Young, Senior Advisor to the Chief Financial Officer.

Cc: Margaret A. Young

Auditee Comments



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20410-0001

May 18, 2001

MEMORANDUM FOR: Sandra G. Elion, District Inspector General for Audit,
Capital District, 3GGA

FROM: Daniel R. Murphy, Chief of Staff, S

A handwritten signature in black ink, appearing to read "Dan Murphy".

SUBJECT: Draft OIG Audit Report - Follow-up regarding CPO Actions

This is in response to your follow-up inquiry regarding actions taken by the Department to ensure that PwC returns 20 percent of the amount received on the completed Audit Response contract and 20 percent of the amount billed on the Funds Control contract. According to the Office of the Chief Procurement Officer (CPO), \$733,798 has been credited against PwC invoices. This reflects reductions in billings from PwC for work completed under the Audit Response and Funds Control contracts through February 28, 2001. These credits were consistent with prior discussions between PwC, the CPO, and former Deputy General Counsel for Programs and Regulations, Kevin M. Simpson, memorialized in a letter signed by Mr. Simpson dated October 10, 2000. (A copy of this letter is attached as Exhibit 1).

I do not agree with the award of this contract to PwC in light of the circumstances surrounding the procurement process as outlined in your report. Moreover, I do not approve of the terms as modified in the October 10th Simpson letter. However, I am advised by attorneys in OGC of the difficulties the Department would have in enforcing a further reduction in fees by reinstating the 20% requirement at this time. In addition, the contract awarded to PwC expires on August 9, 2001, unless the Department exercises an option to renew. This is unlikely since the Department is resoliciting these services. I have also expressed my concern to the CPO regarding the circumstances associated with the award of the initial contract to PwC and directed that the resolicitation be carried out using fair and open competitive procedures in conformance with my memorandum to him dated May 3, 2001.

If additional information is required, do not hesitate to let me know.

Attachment

Auditee Comments

EXHIBIT 1



U.S. Department of Housing and Urban Development
Washington, D.C. 20410-5000

OFFICE OF GENERAL COUNSEL

October 10, 2000

James D. Gibbs
Assistant General Counsel
Pricewaterhouse Coopers LLP
1616 North Fort Myer Drive
Arlington, VA 22209

Re: Resolution of procurement issues concerning FHA Funds Control and FHS
Audit Response Contracts

Dear Jim:

I am writing to memorialize the resolution of our discussions about issues that have arisen concerning the applicability of the regulatory prohibitions on organizational conflicts of interest to the above-captioned contracts (the "FHA contracts"). As you know, HUD received anonymous allegations that PwC helped HUD prepare the statements of work for the FHA contracts. PwC also submitted successful bids for both contracts, thereby raising an issue as to whether PwC's involvement in HUD's drafting of the SOWs resulted in an unfair competitive advantage. In response to these allegations, we have conducted our own inquiries and have met with you to offer you an opportunity to respond to both the allegations and our concerns about their potential significance. Subsequent to meeting with you, we invited you to make a written submission to HUD concerning these issues, which we have carefully reviewed.

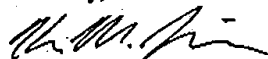
PwC and HUD have been unable to agree on whether there have been violations of the regulatory provisions on organizational conflicts of interest and the significance of any such possible violations. Nonetheless, considering all of the circumstances in their totality, PwC and HUD have agreed to certain measures in the interest of resolving HUD's concerns without the cost or disruption of adversarial administrative or judicial proceedings, and in the interest of preserving a productive and valued business relationship. Specifically, PwC has agreed to cooperate with HUD in implementing the following actions:

Auditee Comments

- PwC will return to HUD 20% of the funds it received under the FHA Audit Response contract (the parties will agree on details about the manner and timing of this);
- PwC will return to HUD 20% of any funds it has received to date under the FHA Funds Control contract (the parties will agree on details about the manner and timing of this);
- HUD will conduct a new competition for the FHA Funds Control contract as soon as possible using accelerated procurement procedures which will provide all interested bidders an opportunity to propose changes or additions to the proposed Statement of Work. PwC will be permitted to participate in this new competition;
- PwC will continue to credit HUD 20% on all new billings under the FHA Funds Control contract until such time as the new competition for the contract is completed. In the event that PwC is selected to continue the FHA Funds Control contract, the requirement of a 20% credit on all billings will cease;
- PwC will provide HUD with a memorialization of the measures it has undertaken to sensitize its staff to future OCI issues of this kind.

Please advise me as soon as possible if you feel this correspondence has misstated the mutual agreement we have reached on these issues. Also, please feel free to call me if you have any questions. I thank you for your cooperation throughout this process.

Sincerely,



Kevin M. Simpson
Deputy General Counsel
Programs and Regulations

Auditee Comments

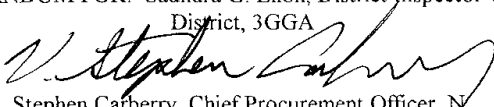


U. S. Department of Housing and Urban Development
Washington, D.C. 20410

May 24, 2001

OFFICE OF THE CHIEF PROCUREMENT OFFICER

MEMORANDUM FOR: Sandra G. Elion, District Inspector General for Audit, Capital
District, 3GGA

FROM: 
V. Stephen Cafberry, Chief Procurement Officer, N

SUBJECT: Draft Report - Use of Contractors by the Deputy Chief Financial Officer

Thank you for the opportunity to respond to the above draft audit report. The comments provided in this memorandum were discussed with Joan Hobbs and Jacqueline Jimmerson of your staff on May 14, 2001.

The instances cited in the draft audit report deal with two primary issues: a specific conflict of interest involving one contractor; and a program official directing or allowing that same contractor to perform improper tasks. I suggest that the draft be revised to accurately portray the collaborative efforts of our respective offices to successfully address these issues.

The conflict of interest problem was brought to my attention by representatives from your office in August 2000. At that time, I considered several options to address the circumstances presented. Termination of the affected contract was chief among them, but I explained that such an action required written documentation of your findings. Absent that documentation, I conducted separate meetings with the Deputy Chief Financial Officer and senior contractor representatives. I was able to obtain the contractor's admission that they had played a significant role in writing the statement of work. I then worked with the Office of General Counsel to develop an appropriate mitigation plan. The terms of the mitigation plan were negotiated with the contractor and I ensured that its implementation was completed. I believe that the mitigation plan was properly developed and implemented, and I will be pleased to cooperate in the recommended evaluation of its effectiveness.

Most of the recommendations stemming from the conflict of interest issue call for systemic changes in procurement policies and procedures. In most circumstances, I believe that sufficient written policy exists to prevent conflicts of interest from having a negative impact on work performed by HUD contractors. With our increased reliance on Accelerated Contracting procedures, we have the opportunity to address this issue in a more direct manner as we conduct industry briefings and one-on-one meetings with participating contractors. My staff will develop

Auditee Comments

2

procedures to accomplish this objective and I will ensure that OCPO personnel are trained in their application. Additionally, to heighten overall sensitivity to the critical issues raised in the report, my staff will draft a memorandum for the Deputy Secretary addressing these issues to Principal Staff.

With regard to the issue of inherently governmental functions, current policy and direction from the Office of Management and Budget (OMB) on reporting commercial activities under the Federal Activities Inventory Reform (FAIR) Act is very different than the Inspector General position taken in this audit. OMB has advised that contractor provision of expert advice and recommendations on matters having an impact on Federal Government policy is *not* an inherently governmental function. The actual determination of policy after consideration of such advice is inherently governmental. Consequently, it is often proper for contractors to provide expert technical assistance and advice on many aspects of the Government's business without actually performing any inherently governmental activity.

Specific comments on each of the draft recommendations is provided in the attachment to this memorandum. It also provides suggested changes to the text to clarify facts.

If you have any questions concerning this response, please contact Tere A. Demer, Deputy Chief Procurement Officer, on (202) 708-1290, x7118.

Attachment

Auditee Comments

Office of the Chief Procurement Officer

Comments on Draft Audit Report - Use of Contractors by the Deputy Chief Financial Officer

General Comments

1. Throughout the draft, please remove the references to "the Office of Procurement and Contracts" and "OPC". Replace them with "the Office of the Chief Procurement Officer" and "OCPO", respectively.
2. Page 9 - The discussion of contract remedies (OIG request for OPC intervention) should be clarified that the payments were received in the form of a credit against costs incurred in contract performance.
3. Page 10 - The conclusion incorrectly states the prohibition against contractors writing statements of work (SOW). A contractor may be used to perform that task; the prohibition is against writing a SOW and then competing for and subsequently performing that same work. Also, on March 26, 1998, the Deputy Secretary issued a memorandum to Principal Staff entitled "HUD 2020 Procurement Reform-Prohibited Contract Services." This memo restated in detail HUD's policies prohibiting the procurement of personal services and inherently Governmental functions. Attachment B to the memo set forth the specific prohibition against the procurement of inherently Governmental functions. To stress the continuing importance of these issues, OCPO will update the memorandum for signature and issuance by the current Deputy Secretary.
4. Page 12 - Add the word personal to the second paragraph and correct the FAR reference cited. The revised sentence should read as follows:

"FAR 37.104(a) characterizes *personal* services contracts....."
5. Page 15, first paragraph - We disagree that relying on a contractor "....to obtain technical assistance in responding to 400 GAO and OIG audit weaknesses...." represents an inherently governmental function. According to the most recent guidance from OMB, a contractor may provide expert technical assistance and advice on many aspects of the Government's business without actually performing any inherently governmental activity. The actual determination of policy or the approval of the recommended course of action are representative of actions that are inherently governmental.
6. Page 16, second paragraph - HUD Handbook 2210.3, paragraph 11-3 requires that the cognizant program office head or designee prepare GTR and GTM appointment memoranda. Accordingly, the final sentence of this paragraph should be revised as follows:

"Also, the GTR and GTM responsibilities and scope of authority were not clearly defined because the Deputy CFO did not prepare appointment memoranda...."

Auditee Comments

Specific Comments to Recommendations

1C. Develop procedures to ensure that OPC staff obtains a signed organizational conflict of interest certification for all contracts.

Concur in principle, but we cannot require a certification. Section 4301 of the 1996 Federal Acquisition Reform Act (FARA) mandated the removal of non-statutorily based certifications from agency supplements to the Federal Acquisition Regulation (FAR).

Rather, we will ensure that current solicitation provisions and contract clauses are used in all HUD contracts and purchases using GSA Schedules. Current HUD/OCPO policy addresses the identification and mitigation of such conflicts. The HUDAR clause at 2452.209-72, "Organizational Conflicts of Interest," (see Exhibit 1, attached) requires contractors to disclose potential or actual conflicts of interest after contract award and provides for the termination of contracts "In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer...."

In addition, the solicitation provision at HUDAR 2452.209-70, "Potential Organizational Conflicts of Interest," (see attached Exhibit 1) requires the Contracting Officer to describe in the clause the nature of the potential conflict. The program office must provide the Contracting Officer with a description of the portions of the proposed statement of work or specifications which, in the program office's judgment, present a potential organizational conflict of interest.

Our increased reliance on Accelerated Contracting (AC) procedures provides an opportunity to address this issue in a more direct manner as we conduct industry briefings and one-on-one meetings with participating contractors. We will develop procedures to accomplish this objective and will ensure that contracting personnel are trained in their application. We suggest that you re-cast this recommendation to focus on this course of action.

1D. Obtain and evaluate reasons why contractors decline to submit proposals. When only one proposal is received, consider re-announcing the contract solicitation to expand competition.

Concur.

1E. Develop procedures to ensure that potential source lists do not include contractors with known conflicts of interest.

Concur. OCPO will revise the current guidance governing requests for contract services in Chapter 4 of Handbook 2210.3 to require program offices to disclose whether or not any outside party (consultant, contractors, etc.) assisted in the development of the statement of work or any other part of the requirement. In addition, we will add a similar provision to the Acquisition Strategy required by our call for FY 2002 procurement plans.

Auditee Comments

1F. Ensure that PWC returns 20 percent of the amount received on the completed Audit Response contract (\$457,500) and 20 percent of the amount billed on the Funds Control contract (amount to be determined when the contract is terminated).

Concur. The Contracting Officer has recovered, in the form of credits, the appropriate amounts for each contract. The recovered amounts are: \$456,604 (Audit Response) and \$277,195 (Funds Control). The latter figure was taken against costs incurred through February 28, 2001.

As the Funds Control contract is still active, we suggest that this recommendation be revised to drop the parenthetical note. Originally, we anticipated that a new Funds Control award (through GSA/FEDSIM) would be in place by that date. Due to the problems encountered with the re-competition, OCPO stopped that effort and authorized the original contract to continue.

1G. - Exclude PWC from participating in future competition for the contracts resulting from PWC prepared SOWs.

Concur. (This policy applies to any contractor with a conflict of interest of this nature.)

2B. Evaluate SOWs to identify and eliminate tasks that may be inherently governmental functions.

Concur.

2C. Instruct the Deputy CFO and other HUD managers not to interfere with the GTRs and GTMs when they are performing their contracting duties.

Concur. OCPO will draft a memorandum for issuance by the Deputy Secretary to Principal Staff addressing this issue. We suggest that this recommendation be re-worded so as to not single out any specific HUD organization. This policy applies across the board.

2D. Require GTRs and GTMs to report inappropriate contract actions directly to the CPO and guarantee protection from retaliation for those who report such actions.

Concur in part. GTRs and GTMs report to and are employees of the program office head sponsoring the procurement action. Upon nomination to that role, they are authorized to act on the behalf of the program office head and the Contracting Officer in monitoring the programmatic/technical aspects of the contractor's performance. If a GTR or GTM believes that an official within their chain of command has acted inappropriately, the first attempt at resolution should be made through their chain of command. If not resolved, they may turn to the Inspector General for Investigations or invoke other administrative rights that may apply (e.g., the Whistleblowers Protection Act-- employee rights under this statute are administered by the Office of Special Counsel, an independent agency).

If the issue involves an on-going procurement action or existing contract, concurrent with the above attempts at resolution, the matter should also be brought to the attention of the

Auditee Comments

cognizant Contracting Officer. The information presented will be assessed in terms of current statutory/regulatory requirements (e.g., HUD Standards of Conduct, the FAR, Procurement Integrity, etc.), contracting policy (e.g., inherently governmental services), and/or the specific contract (e.g., work not authorized). The Contracting Officer will assess the facts and circumstances and involve appropriate HUD officials (Office of General Counsel, Inspector General for Investigations, etc.) to address the issues involved.

We will address these issues in the memorandum to be issued by the Deputy Secretary to Principal Staff.

2.E. - Ensure that GTRs and GTMs are formally designated in writing and trained in executing contractual responsibilities.

Concur. This recommendation mirrors current HUD policy which is recapped below.

During our meeting to discuss the draft audit, however, the IG representatives characterized the problem as a training deficit for those serving as GTMs. The concern was that some GTRs were delegating the full scope of their duties to GTMs who were not trained to carry them out. To address this concern, we will prohibit GTRs from inappropriately delegating their duties to GTMs. We will also work with the HUD Training Academy and program offices to train those GTMs performing GTR functions.

CURRENT POLICY:

- **Designation** - Chapter 11, paragraph 11-3 of Handbook 2210.3 requires that GTRs and GTMs be appointed in writing, and that the duties and limitations of the GTR's and GTM's authority be stated in the appointment. [It is recognized that program office compliance with this requirement has been sporadic. Therefore, OCPO will revise the handbook to require written appointment of GTRs (and GTMs, when identified) be included with each Request for Contract Services or, if not practicable, no later than the contract award date.]
- **Training** of GTRs and GTMs is adequately addressed by the Department's GTR Certification Program, which was developed by OCPO. The certification program includes basic and advanced training requirements for individuals serving as GTRs and GTMs. OCPO maintains a list of certified GTRs, so program clients and OCPO staff can determine if specific individuals have met program requirements. This list is posted on HUDWeb.

The scheduling of program personnel for GTR/GTM training is the responsibility of program office heads. We will stress this issue in the memorandum from the Deputy Secretary to Principal Staff. OCPO has taken leadership of this effort by providing and arranging for classroom training. To date, over 300 HUD staff have completed classroom training courses in basic and advanced contract management topics. This fiscal year, OCPO has scheduled two formal GTR training classes and has included staff designated as GTMs.

OCPO has also created an electronic self-instruction GTR Orientation Course which any HUD employee may take. The course is accessible via the OCPO HUDweb site. To date, over 400 HUD employees have completed this orientation course. While not a substitute for the formal training requirements of the GTR certification program, it does provide information to enable GTRs and GTMs to perform the basic duties of their job. It also serves as refresher for certified GTRs and just-in-time training when formal training is not immediately available.

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EXHIBIT 1 - HUDAR Organizational Conflict of Interest Provisions

2452.209-70 Potential Organizational Conflicts of Interest

As prescribed in 2409.507-1, the Contracting Officer may insert a provision substantially the same as follows in solicitations:

POTENTIAL ORGANIZATIONAL CONFLICTS OF INTEREST (FEB 2000)

(a) The Contracting Officer has determined that the proposed contract contains a potential organizational conflict of interest. Offerors are directed to FAR Subpart 9.5 for detailed information concerning organizational conflicts of interest.

(b) The nature of the potential conflict of interest is [*Contracting Officer insert description*]:

(c) Offerors shall provide a statement which describes concisely all relevant facts concerning any past, present or planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed under the proposed contract and bearing on whether the offeror has a possible organizational conflict of interest with respect to:

(1) Being able to render impartial, technically sound, and objective assistance or advice, or

(2) Being given an unfair competitive advantage. The offeror may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organization and how that structure or system would avoid or mitigate such organizational conflict.

(d) No award shall be made until any potential conflict of interest has been neutralized or mitigated to the satisfaction of the Contracting Officer.

(e) Refusal to provide the requested information or the willful misrepresentation of any relevant information by an offeror shall disqualify the offeror from further consideration for award of a contract under this solicitation.

(f) If the Contracting Officer determines that a potential conflict can be avoided, effectively mitigated, or otherwise resolved through the inclusion of a special contract clause, the terms of the clause will be subject to negotiation.

(End of provision)

2452.209-71 Limitation on Future Contracts.

As prescribed in 2409.507-2, the Contracting Officer may insert a clause substantially the same as follows in solicitations and contracts for services:

LIMITATION ON FUTURE CONTRACTS (FEB 2000)

(a) The Contracting Officer has determined that this contract may give rise to potential organizational conflicts of interest as defined at FAR Subpart 9.5.

(b) The nature of the potential conflict of interest is [*Contracting Officer insert description*]:

(c) If the contractor, under the terms of this contract or through the performance of tasks pursuant to this contract, is required to develop specifications or statements of work that are to be incorporated into a solicitation, the contractor shall be ineligible to perform the work described in that solicitation as a prime or first-tier subcontractor under any ensuing HUD contract.

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- (d) Other restrictions-- [*Contracting Officer insert description*]
- (e) The restrictions imposed by this clause shall remain in effect until [*Contracting Officer insert period or date*].

(End of clause)

2452.209-72 Organizational Conflicts of Interest.

As prescribed in 2409.508-2, insert the following contract clause in all contracts:

ORGANIZATIONAL CONFLICTS OF INTEREST (APR 1984)

(a) The Contractor warrants that to the best of its knowledge and belief, and except as otherwise disclosed, he or she does not have any organizational conflict of interest which is defined as a situation in which the nature of work under a Government contract and a Contractor's organizational, financial, contractual or other interests are such that:

(1) Award of the contract may result in an unfair competitive advantage; or

(2) The Contractor's objectivity in performing the contract work is or might be otherwise may be impaired.

(b) The Contractor agrees that if after award he or she discovers an organizational conflict of interest with respect to this contract, he or she shall make an immediate and full disclosure in writing to the Contracting Officer which shall include a description of the action which the Contractor has taken or intends to take to eliminate or neutralize the conflict.

The Government may, however, terminate the contract for the convenience of the Government if it would be in the best interest of the Government.

(c) In the event the Contractor was aware of an organizational conflict of interest before the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the Government may terminate the contract for default.

(d) The provisions of this clause shall be included in all subcontracts and consulting agreements wherein the work to be performed is similar to the service provided by the prime contractor. The Contractor shall include in such subcontracts and consulting agreements any necessary provisions to eliminate or neutralize conflicts of interest.

(End of clause)

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